



TERMS AND CONDITIONS Action Web Design Limited

1. General

This Agreement details the terms and conditions governing your use of the products and services made available to you by Action Web Design Ltd, hereinafter called “Action Web” or “We” or “Our”. The use of products or services supplied by Action Web, represents that you have read and understood and agree to this Agreement and conditions. This document represents the whole agreement and understanding between Action Web and the individual, corporation or organisation who uses or subscribes to the products and services hereinafter called “Customer” or “Customers” or “You” or “you”. This document is referred to as the “Agreement”.

PLEASE READ THIS AGREEMENT CAREFULLY. Action Web reserves the right to terminate any transaction, service, account or product, should you be found to be in violation of this Agreement.

Action Web reserves the right to modify this Agreement at any time, effective upon posting of the modified Agreement to this URL: <http://www.actionweb.co.nz/Terms.pdf>. Your use or order of any of Action Web’s services demonstrates your unconditional acceptance of this Agreement.

This Agreement applies to all products and services that Action Web Design Ltd provides to you from the Updated Date or in the future. This Agreement always applies except when we have expressly notified you otherwise in writing.

2. Commitment and Services

You are a Customer whose business we value. At Action Web we are committed to providing you with a high quality service which we will deliver promptly and efficiently. When you register or sign up for any service, it is your responsibility to ensure that you know what the product or service is, and what you are receiving, and are aware of charges, limitations, additional charges that may be relevant, and specific limitations which may apply. Action Web endeavours to provide reliable, continuous services at all times, however the service is not totally fault-free and relies on factors outside the control of Action Web. Our services are provided at such times and means to the customer as is practical.

It is the Customer's responsibility to keep contact details up to date and advise Action Web of any changes.

Each Party gives the other its consent to positively publicise the business relationship for marketing and promotional purposes, but not disclose the terms of it.

We retain the right to refuse service to anyone at any time. This Agreement sets out what we will do for you, as well as your responsibilities to Action Web.

3. Terms of Payment

- a. Payments for domain hosting, web hosting and email hosting services operate on a pre-paid subscription basis. To allow time for batched processing, payment is due 14 days before the expiry date. This will renew the contract for the next year. For all other services and/or products, payment is due 14 days from the invoice date.
- b. All hosting fees are non-refundable. A reconnection fee applies if you fail to pay your account and are disconnected by Action Web.
- c. If the Customer does not pay the Charges on time Action Web may, at its option do any or all of the following:
 - i) suspend or restrict your use of the Services, until such time as the outstanding invoice(s) are paid for in full. When outstanding accounts are suspended, email and websites will cease to function.
 - ii) charge a finance fee of 2.5% per month, compounded monthly, payable on all overdue amounts.
 - iii) charge all collection and administration costs incurred by Action Web.
 - iv) suspend any current development work for the Customer.
- d. Suspended accounts may be referred to a debt collection agency without further notice. Any expenses incurred in recovery of debt, including but not limited to legal and debt collection costs will be added to the account balance.
- e. Action Web will endeavour to notify the Customer by email where an account is overdue and facing suspension but Action Web takes no responsibility for the successful receipt of email messages.
- f. Action Web reserves the right to invoice a progress payment (being a percentage of the balance) for services undertaken, where the project development continues on for six weeks or more.

4. Domain registrations

- a. All domain registration services operate on a pre-paid subscription basis. They are crucial to all your web services and email accounts.
- b. **Register a new domain:** these are on a first come first served basis. We will advise on best choice of domain names. Customers can use the Search function at www.actionweb.co.nz to locate available domain names and instructions on how to register a new domain name. Action Web will register available domain names for the Customer on receipt of payment.
- c. **Requests for UDAI:** will be supplied for no charge as long as outstanding accounts are settled.
- d. **Transfer existing domain registration to Action Web Design:** no charge.
- e. **Redirect additional domain registration** to a website hosted by Action Web: no charge.
- f. **Renew a domain registration:** A GST invoice will be emailed at least 30 days prior to the expiry date. If domain registration payment has not been received, a statement will be emailed approximately 14 days before expiry. Payment for renewal of your domain registration is due 14 days before the expiry date to allow time for payment processing, Allow at least 21 days for cheque payment processing. If you fail to make payment by the expiry date your domain will be cancelled and your website and email services will cease to function. Your domain will be available for others to register. Web and email services will not be provided until payment is made in full.
- g. **Domain cancellation:** 14 days notice is required for the cancellation of domain registrations.
- h. All invoices and reminders are emailed to the account holder's email address. It is the Customer's responsibility to keep **contact details** up to date and advise Action Web of any changes. Visit <http://whois.domaintools.com> to check contact details for your domain.

5. Web Design

- a. Web Design includes analysis, consulting, programming, design or creative work, database development and all updates and modifications to Websites
- b. The Customer agrees to make information and resources available to Action Web in a prompt, timely manner to promptly fulfil the requirements of the Terms of Reference.
- c. Action Web will use its best endeavours to deliver the web design in accordance with the Terms of Reference and any attached subsequent modifications to the Terms of Reference accepted in writing by Action Web .
- d. When the work has been completed according to the Terms of Reference and the Customer approves the completed work, Action Web will invoice the Customer for Final Payment.
- e. The balance of the Final Payment is due 14 days after the Customer has received the completed service, even though additions and variations to the Terms of Reference may still need to be completed and the site may not be live.
- f. A website will be published on receipt of the Final Payment and Action Web will arrange hosting and up to 5 email addresses
- g. A website will be developed to display in Firefox version 3 onwards and Internet Explorer version 7 onwards for PC . Action Web does not warrant that the website will render exactly the same in all browsers. Additional charges may apply for adaptations to display websites in alternative browsers or browsers introduced after the date of the Terms of Reference.

6. Web Design Estimates

- a. The Customer may request an Estimate from Action Web setting out the price and quantity of the Goods to be supplied.
- b. Action Web will agree with the Customer upon a Terms of Reference indicating the purpose and scope of the project.
- c. If the Estimate and/or the Terms of Reference are acceptable to the Customer, the Customer may place an order within an acceptable timeframe.
- d. The rates given in the Estimate exclude GST and any agreed disbursements (travel, fax, copying, tolls etc), which will be charged in addition. Travel will be charged at half the hourly rate.
- e. Action Web may require a 50% deposit to proceed.
- f. Action Web will commence work when it has received written acceptance of the Estimate and Terms of Reference, payment of any relevant deposit and the Customer has provided all logos, photographs and text content in electronic format.
- g. Additions to the work undertaken by Action Web at the request of the Customer outside of the agreed Terms of Reference will be charged at the normal hourly rate and itemised on the final Invoice.
- h. An Estimate is valid for 30 days from the date of the Estimate.

7. Price of Web Design

- a. The Price is based on Action Web 's normal hourly rate calculated according to the time spent on the task.
- b. Action Web may also agree to limit charges to a certain level in the form of an Estimate described in this Agreement.
- c. Action Web reserves the right to implement additional charges for variations to the Terms of Reference after the order has been placed. Additional charges will be itemised on the invoice.
- d. The Price shall be as indicated on invoices provide by Action Web to the Customer in respect of products and/or services supplied or the Price shall be indicated in emailed correspondence or the Price shall be Action Web 's current Price at the date of delivery of any goods.
- e. Action Web will charge the Customer a minimum charge of \$50 + GST for any work undertaken.

8. Cancellation of Web Design

Any request for cancellation must be made in writing and received by Action Web within 14 days of placing the Order. Any deposit paid will be retained to offset design work done to date and the Customer agrees to pay for any programming, design or creative work Action Web has already done, not covered by the deposit.

9. Ownership of Web design

- a. The Customer retains any copyright it owns in any artwork and text content it has supplied to Action Web .
- b. Ownership of all HTML code and all text content created for a Customer's website passes to the Customer on completion of the project, subject only to the condition that the Customer settles all outstanding accounts.
- c. All non-HTML code (e.g.PHP, MySQL, Coldfusion, Javascript, Java and dynamic HTML code) developed by Action Web remains the intellectual property of Action Web . All non-HTML code is supplied with a licence for use by the Customer only. This licence prohibits all editing, reverse engineering of any non-HTML code or its on-sale to any third party or use to provide services which otherwise compete with Action Web . Copying or disseminating any non-HTML code supplied is a breach of copyright. Action Web reserves the right to reuse some or all of the non-HTML code on other projects as they see fit without breaching Customer copyright.
- d. Action Web will, unless specifically requested otherwise, add a link at the bottom of the Customer's website to Action Web 's website. Action Web reserves the right to display any work in its portfolio.
- a. Data contained within the database is the property of the Customer. Access to any database structure hosted on Action Web 's server is restricted to Action Web employees.
- e. All photographs may be scanned by Action Web , but remain the property of the Customer.
- f. Copyright notices may be provided for photos supplied by others, if supplied by the Customer. The Customer will be responsible for obtaining permission to use photographs and material copyright to a third person or party. Action Web takes no responsibility for issues arising from using supplied materials if it is found to be copyright to a third person or party.
- g. The Customer warrants that any materials supplied to Action Web do not infringe upon the intellectual property rights of any third party, and the Customer further agree that the information the Customer provides meets the legal requirements of the Fair Trading Act 1986, the Copyright Act 1994, the Defamation Act 1992, all other applicable laws and any relevant Advertising Codes of Practice.

10. Web Design Warranty

Action Web undertakes to correct that part of the product which does not comply with the Terms of Reference where written notification is received by Action Web within 30 days from the date the goods were delivered. No claim shall be accepted under such warranty if the product has been altered by any third party or results from Customer misuse or negligence.

11. Web Hosting

- b. All Web Hosting fees are pre-paid yearly in advance, preferably by direct credit or automatic payment.
- c. Action Web will provide web space for website hosting, database hosting, domain name hosting and email hosting
- d. Action Web will provide the website hosting services that the Customer has selected in the Terms of Reference.
- e. Website hosting charges commence from the date a website is available for Customer review online - even though the website may not yet be live.
- f. Action Web will make every reasonable effort to ensure hosting is secure and free from disruption. Backups are taken nightly and are available for the 14 days prior. A charge will be made for restoration from backups.

- g. Access to any database structure and scripts is limited to employees of Action Web.
- h. Action Web reserves the right to deliver hosting services in whatever way Action Web deems to be most effective. This may include changing suppliers.
- i. The Customer agrees that the Customer will only use the services of Action Web for a lawful purpose.
- j. If the Customer requests us to link to third party applications or websites, the Customer understands that Action Web has no control on the functionality or content of the application or website and is therefore not responsible for the functionality or content contained therein and Action Web is not responsible for any resultant criminal and civil liability or failure of the third party application or website.
- k. A fair use policy applies to hosting. Costlier hosting plans are available for high server resources. Action Web will be the sole arbiter of what constitutes a high server usage level.

12. Web Marketing

- a. Action Web will optimise and register the website on the major Search engines as a first step, after going live. Responsibility for ongoing marketing of the Web site rests with the Customer.
- b. Action Web will use its best skills to provide Marketing Tips and information when the Customer's website goes live and will suggest ways to improve the Customer's search engine rankings and results.

13. Privacy

Action Web undertakes to hold all information held in secure areas of the Customer's website as confidential and will not disseminate, reproduce or otherwise deal with this information in any way whatsoever.

Action Web will not reveal, sell, or in any way divulge information about the Customer or the Internet usage of the Customer to any individual, business, marketing, or research group without prior consent of the customer or without legal warrant.

14. Limitation of Liability

Action Web does not warrant that the functions contained in the web site will operate uninterrupted or error-free. It is the Customer's responsibility to check that the website meets the requirements of the Terms of Reference before purchasing the web software.

In no event will Action Web be liable to the client or any third party for any:

- a. loss or damage to information or data from any cause,
- b. breach of security;
- c. loss of profit; or
- d. incidental, indirect, special or consequential loss or damage.

The Customer will be liable for all charges and expenses incurred by Action Web resulting from any security breach or attack or Customer error that involves Customer hardware, software or network configuration.

In any event, the maximum aggregate liability of Action Web to the Customer arising out of any claim for loss and/or damages (for any cause whatsoever) will under no circumstances exceed an amount equal to the total charges paid by the Customer under the relevant Terms of Reference in the 12 month period immediately preceding the event giving rise to liability.

Action Web is not responsible for any failure or delay to perform its obligations due to events beyond its reasonable control or failure by the Customer to perform any Customer responsibilities under this Agreement.

15. Definitions

- Action Web means Action Web Design Limited
- Customer means the person or company buying the products and/or services from Action Web
- Products and/or services mean the web software, consulting services and web services being purchased by the Customer from Action Web
- Contract means the contract between Action Web and the Customer for the purchase of the products and/or services .
- Date of the contract means
 - i) the date of acceptance of the order by Action Web or
 - ii) the date the deposit is received by Action Web
- Contract price means the price of products and/or services as agreed between the Customer and Action Web
- Person includes a corporation, association, firm, company, partnership or individual.
- Estimate shall mean an estimated price on offer for a fixed term
- Written means any correspondence between Action Web and Customer sent by post, by email or by facsimile